

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Speier Analyst: Marion Mann DeJong Bill Number: SB 1691

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 04/10/2000

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Employer Provided Domestic Violence Awareness Credit/Allows Credit to Reduce Tax Below Tentative Minimum Tax

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED \_\_\_\_\_ STILL APPLIES.

OTHER - See comments below.

### SUMMARY OF BILL

This bill would provide a credit equal to 75% of the costs paid or incurred in California in establishing and maintaining resources or educational programs to raise awareness of domestic violence in the workplace.

### SUMMARY OF AMENDMENT

The April 10, 2000, amendments made the following changes:

- ⌚ Added legislative findings and declarations.
- ⌚ Provided a credit under the Personal Income Tax Law (PITL) as well as the Bank & Corporation Tax Law (B&CTL).
- ⌚ Added a repeal date.
- ⌚ Limited the credit carryover to eight years.
- ⌚ Limited the costs to those incurred in California.
- ⌚ Clarified the type of training and leave programs that would qualify for the credit and added a definition of qualified costs.
- ⌚ Deleted the credit limitation provisions under the B&CTL for single member limited liability companies. (According to the author's staff this item was inadvertently deleted, and the bill will be amended to reinsert current law. Thus, this item will not be discussed in this analysis.)

The amendments resolved many of the policy considerations raised in the department's analysis of the bill as introduced February 22, 2000. The current law discussion of Specific Findings in the department's prior analysis still applies. The remainder of that analysis is replaced with the following.

### Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Johnnie Lou Rosas

4/20/00

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to taxable or income years beginning on or after January 1, 2000, and before January 1, 2005.

SPECIFIC FINDINGS

**This bill** would create a credit equal to 75% of the costs paid or incurred in California in establishing and maintaining resources or educational programs to raise awareness of domestic violence.

"Resources and educational programs to raise awareness" would include, but not be limited to, any of the following:

- ⌚ Developing and implementing documented training about the impact of domestic violence for human resource staff, management and employee assistance professionals, and security staff and employees. Trainers would be required to demonstrate expertise in understanding domestic violence.
- ⌚ Providing leave, either paid or unpaid, for employees who are domestic violence victims to seek shelter, seek counseling at a local service provider, or for court-related needs.
- ⌚ Integrating the needs of domestic violence victims who are employees into existing employment policies and practices.
- ⌚ Developing security protocols for employees, including employees who are domestic violence victims.
- ⌚ Providing domestic violence resources to employees (e.g., security for employees, information about support services for domestic violence victims, emergency financial assistance, and relocation assistance).

"Domestic violence victim" would be defined by Section 6211 of the Family Code that defines "domestic violence" as abuse perpetrated against specified persons (e.g., a spouse or former spouse).

"Allowable costs" would include:

- ⌚ costs to hire community-based domestic violence programs to provide training, services, and materials and to consult in the development of domestic violence workplace policies and programs; and
- ⌚ costs of providing domestic violence resources to employees (e.g., development of security protocols, information about support services for domestic violence victims, emergency financial assistance, and relocation assistance).

Any credit amount in excess of tax could be carried forward up to eight years. The bill specifies that this credit would be allowed to reduce regular tax below tentative minimum tax.

### Policy Considerations

Conflicting tax policies come into play whenever a credit is provided for an expense item for which preferential treatment is already allowed in the form of an expense deduction. This new credit would have the effect of providing a double benefit for that expense item. On the other hand, making an adjustment to deductions in order to eliminate the double benefit creates a state and federal difference, which is contrary to the state's general conformity policy. In the case of a one-time expense deduction, the reduction of that expense would not create an ongoing difference.

This bill would provide a credit for 75% of costs that are currently deductible for tax purposes. This credit, combined with the deduction of the expenses for federal and state tax purposes, could provide tax reductions of more than 100% of the taxpayer's costs.

This bill provides that allowable costs must be paid or incurred in California to qualify for this credit. However, allowable costs include both costs to hire community-based domestic violence programs to provide training, services and materials and to develop security protocols, emergency financial assistance and relocation assistance. This may raise constitutional issues because a multi-jurisdictional taxpayer might pay or incur these expenses outside of California (for example, at the corporate or other headquarters in another state). However, the taxpayer would not be able to claim this credit even though items such as materials were then shipped into California for use at the taxpayer's business location within California. It may be found that the taxpayer's inability to deduct these expenditures unfairly discriminates against out-of-state businesses that are subject to California tax. It would be more appropriate to limit the credit to costs incurred to train and provide assistance to California employees.

### Implementation Considerations

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the department's normal annual update.

It may be difficult for audit staff to verify the expenses allowable for the credit. In addition, because the definition of domestic violence awareness program is very broad and subjective, taxpayers and department staff may disagree on whether expenses would qualify for the credit.

## FISCAL IMPACT

### Departmental Costs

This bill would not significantly impact the department's costs.

### Tax Revenue Estimate

Based on the data and assumptions below, revenue losses are estimated as follows:

Estimated Revenue Impact		
Income Years Beginning On or After January 1, 2000		
Enactment Assumed After June 30, 2000		
Fiscal Years		
(In <b>Millions</b> )		
2000-01	2001-02	2002-03
-\$25	-\$33	-\$34

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

The estimated losses increased approximately \$7 million each year as compared to the bill as introduced because the amendment added PIT taxpayers.

#### Tax Revenue Discussion

The projected revenue losses were derived using various information sources including WEAVE, the Bureau of Labor Statistics (BLS) data on similar employee benefits, the Blue Shield Domestic Violence Program, and the University of Illinois' evaluation of a domestic violence prevention program. Experts in the California domestic violence prevention programs believe this bill could provide a significant impetus for expansion of domestic violence programs. The number of training classes, leave time, etc., used in this analysis is assumed to be largely attributed to the substantial incentive effect of this proposal.

The main components of this revenue projection are for domestic violence training for employees and for leave time provided under a leave policy addressing the needs of domestic violence victims. A total of 11 million California employees was used in calculating the estimated revenue impact. That number was derived by starting with the 10 million PIT returns with wage income (the 1999 FTB Annual report), increased by 43%, or 4.3 million individuals, to account for two-wage earner families. The approximately 14 million wage earners was reduced to reflect employees of employers not eligible for the credit. The ineligible employers accounted for 640,000 exempt organization employees, 218,000 insurance company employees, and 2.2 million government employees. This equates to 11 million eligible employees of PITL and B&CTL employers. The associated revenue loss was computed as follows:

1. Training. Based on BLS data, it is assumed that 30% of the total 11 million California employees would receive domestic violence training over a three-year period, with training continuing proportionately in later years. Based on conversations with the head of the Blue Shield Domestic Violence Program and a member of the statewide leadership team on domestic violence, 30% of eligible employees would receive training from commercial trainers. The remaining 70% would receive training from volunteers recently trained to provide domestic violence training statewide.

The appropriate costs for both types of training were applied to each section of the universe, total cost of \$20.5 million multiplied by the proposed 75% tax credit. It is assumed that 75% of the credit would be applied in the year generated, 10% applied in the following income year, and the remainder would not be applied due to some employers' insufficient tax liability to offset the generated credit. **The total projected training portion of the credit for 2000 is approximately \$12 million.**

2. Employee leave. Although the bill does not require that paid leave be provided, taxpayers would be allowed a credit for allowing victims of domestic violence to take paid leave under a leave policy that recognizes victims' needs. So women who would take sick leave because of domestic violence would qualify the taxpayer for the credit. To estimate the revenue impact, it was assumed that 25% of the 5.5 million corporate women employees would experience domestic violence (during their lifetime) and receive paid leave for domestic violence issues. This assumption was based on information from the sources listed above. It was projected that 50% of the domestic violence cases in which paid leave is allowed would not be reported to employers as related to domestic violence. This is in part because of the stigma attached to domestic violence. Thus the taxpayer would not be aware that the leave time would qualify for the credit. The average time off work per domestic violence incidence is three days, and an average wage of \$15 per hour was used. It is assumed that employers would incur 10% of these expenses each year, for a total projected cost for paid leave associated with domestic violence of approximately \$25 million. It was assumed that 65% of the available credit would be applied in the year generated, 10% would be applied in the following year, and the remaining credit would not be applied due to employers with insufficient tax liability to offset the credit. **The total projected leave time portion of the credit for 2000 is approximately \$12 million.** A growth rate of 7% per year was applied to subsequent years.

3. Security. Estimated costs related to employer provided security relating to domestic violence also were included in this projection. However, it was projected that these costs would not have a material impact on the projected revenue losses. It was assumed that an employer could not claim the credit for an existing security force.

Since the bill does not require that the credit be in-lieu of any associated deductions, no offset was made for foregone deductions. The estimate is larger in the first year to account for taxpayers that would reduce estimated tax payments over the first half of the fiscal year. A higher credit utilization rate (75%) was used for the training portion of the credit than was used for the leave portion (65%). That is because it was assumed that larger firms were more likely to implement training programs while victims of domestic violence were more likely to report domestic violence as the reason for taking leave time in small sized firms. Further, if firms report training credits, less tax would be available for leave payments.

#### BOARD POSITION

Pending.